

Before the Board of Zoning Adjustment, D. C.

Application No. 11756 of Sidney and Miriam Freedman, pursuant to Section 8207.2 of the Zoning Regulations for a special exception to permit a change of non-conforming use (from the servicing of copy machines to retail sales and stock room for fruits and flowers) as provided by Sections 7204.2 and 7209 of the regulations, at the premises located at 613 K Street, N. W., in the R-5-D Zone, Lot 3, Square 451.

HEARING DATE: October 16, 1974

EXECUTIVE SESSION: October 25, 1974

FINDINGS OF FACT:

1. The existing non-conforming use located on the subject property is classified as a C-2 use.

2. The subject property was located in the C-3-B zone in 1968 when Certificate of Occupancy No. B-64032 was issued for the existing non-conforming use, (servicing of copy machines). In 1973, the Zoning Commission amended the official Zoning Map changing the zone in which the subject property was located from C-3-B to R-5-D, Mount Vernon East Map Amendment, Z.C. Case No. 72-25, Order No. 77, December 7, 1973.

3. The Zoning Regulations at Section 7104.2, allows the Board (in exercise of its authority) to permit "a class 11 non-conforming use to be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted".

4. The Board finds this issue in this case to be whether or not the proposed non-conforming use is a use which would be permitted in the most restrictive district in which the existing non-conforming use is permitted.

5. **The** applicant asserts that the proposed use of retail sales and accessory stock room for fruits and flowers is a retail use and an appropriate use change as provided by Section 7104.2 of the regulations.

6. The Board notes that a retail sales use is classified as a C-1 Zone use and is a use which is permitted in the C-2 Zone district, the use classification of the existing non-conforming use of the subject property.

7. The applicant testified at the Public Hearing, and the Board finds, that the proposed use entails the accessory storage of fruits and flowers which are delivered to vendors who sell the goods in carts on the streets of Washington, D.C. during the day, the unsold goods are returned to the subject property each evening by trucks.

8. The applicant testified at the Public Hearing and the Board finds, that the people selling the goods in question are commissioned vendors who are paid every day. The applicant further testified that the goods are delivered to the vendors on a consignment basis.

9. The applicant testified and the Board finds, that the vendors who sell the goods in question are individually licensed by the District of Columbia and that the applicant, does not pay unemployment compensation or social security for the vendors.

10. The applicant testified and the Board finds, that the vendors are paid according to how much they have taken in during the day and guaranteed at least \$100.00 dollars per week.

No opposition was registered to this application at the Public Hearing.

12. The Board finds that the vendor receives the goods on consignment for the purpose of sale to make profit, not for his personal consumption, but to sell to the ultimate consumer for his consumption.

13. The Board finds, that because the vendors who sell the fruit and flowers are paid by the applicant based upon how much they sell, are licensed individually, that the applicant does not deduct social security or pay unemployment compensation for the vendors and delivers to the vendors

the goods by consignment for sale to the consumer, that the proposed use is a wholesale use rather than a retail use as alleged by applicant.

14. The Board takes notice that a wholesale use of property is classified as a C-M zone use which is less restrictive in nature than the most restrictive district in which the present non-conforming use of the subject property is permitted.

CONCLUSIONS OF LAW AND OPINION:

Based upon the above findings of fact and evidence of record, the Board is of the opinion, that because the proposed use is conducted on a consignment basis, the applicant pays the vendor based upon the volume of business they conduct, the vendors are individually licensed as vendors and the applicant neither deducts social security nor pays unemployment compensation, that the vendors are independent contractors, who retail the goods sold to ultimate consumers who use the goods for their personal benefit. Therefore, the Board concludes that the applicant's use of the subject property and his relationship to the vendor creates a wholesale business as opposed to a retail business. A wholesale business being a C-M use, the Board concludes as a matter of law that the proposed use is not permitted in the most restrictive district in which the existing non-conforming use is permitted, thus, the proposed change of non-conforming use cannot be granted consistent with the prescriptions of Section 7104.2 of the regulations. The Board is of the opinion that the granting of this application to permit the storage, transportation and consignment of goods to vendors who then sell to ultimate consumers on the street is inconsistent with the Zoning Regulations and if granted would not be in harmony with the general purpose and intent of the Zoning Regulations.

Application No. 11756

Page 4

ORDERED:

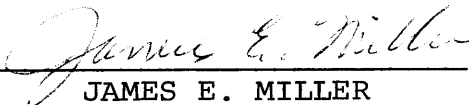
That the above application for the use of the subject property for storage and transportation of goods to vendors who sell the goods to street consumers be and is hereby DENIED

VOTE:

4-1 (Martin Klauber dissenting)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
JAMES E. MILLER  
Secretary to the Board

FINAL DATE OF ORDER: DEC 16 1974